

**REMARKS**

Please reconsider the present application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering the present application and indicating that claims 23, 24, and 26-34 contain allowable subject matter.

**I. Disposition of Claims**

Claims 1-41 are currently pending in the present application.

**II. Rejection(s) Under 35 U.S.C. § 102**

Claims 1-22, 25, and 35-41 of the present application were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,420,903 issued to Singh et al. (hereinafter "Singh"). For the reasons set forth below, this rejection is improper.

In the Response to the Office Action of July 6, 2004, the present application was amended to include language stating that the present application claims benefit, under 35 U.S.C. § 120, of U.S. Patent Application Serial No. 09/638,338, filed on August 14, 2000. A Petition to Claim Benefit under 35 U.S.C. § 120 ("Applicant's first petition") was also submitted with the Response to the Office Action of July 6, 2004.

Subsequently, on March 3, 2005, the USPTO dismissed Applicant's first petition as not conforming to the requirements of 37 CFR § 1.78(a)(3).<sup>1</sup> In response, on May 9, 2005, Applicant submitted a Petition under 37 CFR § 1.78(a)(3) ("Applicant's second

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<sup>1</sup> A final Office Action was issued on March 11, 2005 in view of the USPTO dismissal of Applicant's first petition.

petition”) to address the purported deficiencies cited in the USPTO’s dismissal of Applicant’s first petition.

Subsequently, on June 2, 2005, the USPTO dismissed Applicant’s second petition as being moot.<sup>2</sup> Specifically, the USPTO stated that because the present application was filed on November 20, 2000, a petition under 37 CFR § 1.78(a)(3) is inapplicable as this section only applies to applications filed on or after November 29, 2000.<sup>3</sup>

For applications filed before November 29, 2000, all that is required under 37 CFR § 1.78 for Applicant to claim benefit of an earlier filed application is to amend the later-filed application to reference the earlier-filed application. *See* CFR § 1.78(a)(2)(iii). In regard to the present application, which was filed on November 20, 2000, such action was properly taken by Applicant in the Response to the Office Action of July 6, 2004.<sup>4</sup> Thus, prior to any action following the filing of the Response to the Office Action of July 6, 2004, Applicant had properly established August 14, 2000 as the earliest effective filing date of the present application.

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<sup>2</sup> An Advisory Action was issued on June 8, 2005 in view of the USPTO dismissal of Applicant’s second petition.

<sup>3</sup> However, Applicant notes that the USPTO initially recommended that Applicant file such a petition in its dismissal of Applicant’s first petition.

<sup>4</sup> In telephone conversations with Applicant, both Examiner Donaghue and Ms. Frances Hicks (USPTO Petitions Branch) agreed with Applicant that the USPTO erred in its handling of Applicant’s first petition.

Because the present application is entitled to a filing date of August 14, 2000, Singh is not and cannot be prior art to the present application. Accordingly, withdrawal of the § 102 rejections and issuance of a Notice of Allowance are respectfully requested.

### **III. Conclusion**

Applicant believes this reply is fully responsive to all outstanding issues and places the present application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 03226.049001; P5243).

Date: August 10, 2005

Respectfully submitted,



Wasif H. Qureshi, Reg. No. 51,048

OSHA • LIANG LLP

One Houston Center, Suite 2800

1221 McKinney Street

Houston, TX 77010

Telephone: (713) 228-8600

Facsimile: (713) 228-8778

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